

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

MARIA COTON-STEPHENS and
TYRONE STEPHENS,

Plaintiffs,

V.

CONAGRA FOODS, INC.,
a Delaware Corporation,

Defendant.

FILED: AUG 05, 2008

CASE NO.:08CV4402

JUDGE ASPEN

MAGISTRATE JUDGE BROWN
RCC

COMPLAINT

Plaintiffs MARIA COTON-STEPHENS and TYRONE STEPHENS, by their attorneys, **KENNETH J. ALLEN & ASSOCIATES, P.C.**, allege as follows against Defendant ConAgra Foods, Inc. (hereafter "Defendant" or "ConAgra"):

INTRODUCTION

1. MARIA COTON-STEPHENS (herein “Maria”) contracted Salmonella from eating ConAgra's contaminated peanut butter, which was all manufactured and packaged in a single location – ConAgra's plant in Sylvester, Georgia. At all relevant times, Maria was and is a resident of the state of Illinois and is the wife of Plaintiff TYRONE STEPHENS (herein “Tyrone”).

2. On February 14, 2007, the Food and Drug Administration issued a national warning advising people not to eat from certain jars of Peter Pan brand or Great Value brand peanut butter due to a risk of contamination with Salmonella.

3. At the same time it issued its warning to consumers, the FDA announced a recall of ConAgra's implicated peanut butter.

4. Salmonella is a bacterium that can cause fever, diarrhea, abdominal cramps, and, in a person with poor underlying health or weakened immune systems, life-threatening infections.

5. Salmonella lives in the intestinal tracts of warm blooded animals, such as rats and birds, and is found in their feces.

6. The FDA's February 14, 2007 warning was based on an epidemiological study by the Centers for Disease Control and Prevention (CDC), and state and local health agencies, which linked, at that time, 288 cases of food-borne illness in 39 states to consumption of ConAgra's peanut butter.

7. On February 21, 2007, the FDA confirmed the presence of Salmonella in opened jars of Peter Pan and Great Value peanut butter obtained from infected persons. Over 329 cases of people infected with Salmonella had been reported to the CDC, with at least 51 requiring hospitalization.

PARTIES

8. Plaintiffs are citizens of Libertyville, Illinois.

9. Defendant ConAgra, Inc. is a corporation organized under the laws of the

State of Delaware that has its corporate headquarters located in Omaha, Nebraska.

10. At all times relevant, ConAgra manufactured, advertised, marketed, distributed, and sold Peter Pan and Great Value peanut butter throughout the United States, including Illinois.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the named plaintiffs and the defendant are of diverse citizenship and the amount in controversy, exclusive of costs and interest, exceeds \$75,000.00.

12. This Court has general personal jurisdiction over ConAgra because it conducted systematic and continuous business activities in and throughout the State of Illinois by advertising, marketing, distributing, and selling peanut butter to the plaintiffs in Illinois and elsewhere.

13. Venue is properly laid in this district pursuant to 28 U.S.C. § 1391(a) because ConAgra conducts business in Illinois, and within this judicial district, within the meaning of 28 U.S.C. § 1391(a) as defined in § 1391(c), and because a substantial part of the events giving rise to this claim occurred in Illinois, including Maria's consumption of ConAgra's contaminated peanut butter, her resulting infection with Salmonella and renal failure.

FACTUAL BACKGROUND

14. Plaintiffs re-allege and incorporate herein, as if set forth in full, each and every allegation contained in the preceding paragraphs and allege:

15. Salmonella is a bacterium that lives in the intestinal tracts of humans and

other animals. Salmonella bacteria are usually transmitted to humans by eating foods contaminated with feces of animals such as birds or rats. Food may also become contaminated by the unwashed hands of an infected food handler. Foods contaminated with Salmonella usually look and smell normal.

16. Between 12 and 72 hours after infection with Salmonella, most people develop nausea, diarrhea, fever, fatigue, muscle pain and abdominal cramps. The illness usually lasts 4 to 7 days.

17. However, some infected people develop diarrhea so severe that they need to be hospitalized.

18. In some infected people, the Salmonella infection spreads from the intestines to the blood stream, and then to other body sites and can cause death, unless the person is treated promptly with antibiotics. The elderly, infants, and those with impaired immune systems are more likely to have a severe illness.

19. On February 14, 2007, the Food and Drug Administration ("FDA") issued a national warning advising people not to eat from jars of Peter Pan brand or Great Value brand peanut butter bearing a product code beginning with "2111" due to a risk of contamination with Salmonella.

20. The FDA's warning was based on a recent epidemiological study by the Centers for Disease Control and Prevention (CDC), the states and local health agencies, which linked 288 cases of food-borne illness in 39 states to consumption of varying types of Peter Pan peanut butter.

21. On February 21, 2007, the FDA confirmed the presence of Salmonella in opened jars of Peter Pan and Great Value peanut butter obtained from infected persons.

22. Over 329 cases of people infected with Salmonella had been reported to the CDC, with at least 51 requiring hospitalization.

23. Sometime in early September of 2006, Maria consumed Peter Pan peanut butter carrying a product code beginning with "2111" on the jar lid.

24. Maria became violently ill with diarrhea and vomiting and was taken to the emergency room at Condell Medical Center in Libertyville, Illinois in September of 2006.

25. Maria went underwent extensive treatment and was diagnosis with renal failure, among other illnesses at Condell Medical Center.

26. Plaintiffs have suffered severe injuries and damages of a personal and pecuniary nature as a result of Maria's Salmonella poisoning after consuming Peter Pan peanut butter carrying a product code beginning with "2111" on the jar lid.

COUNT I Negligence

28. Plaintiffs re-allege and incorporate herein, as if set forth in full, each and every allegation contained in the preceding paragraphs and further allege:

29. At all times relevant, ConAgra had a duty to exercise reasonable care in the manufacturing, packaging, distribution and sale of its peanut butter, including the duty to ensure that its peanut butter was not unreasonably dangerous to consumers due to contamination with Salmonella bacteria.

30. ConAgra knew or in the exercise of reasonable care should have known that if its peanut butter was not properly manufactured, packaged, distributed and sold, such peanut butter was likely to be contaminated with Salmonella and therefore unreasonably dangerous to consumers.

31. ConAgra breached its duties by failing to exercise ordinary care in the manufacturing, packaging, distribution and sale of its peanut butter, and manufactured, distributed and sold peanut butter contaminated with Salmonella.

32. As a direct and proximate cause of ConAgra's negligence, plaintiffs have suffered the damages and injuries described herein.

COUNT II

Strict Liability

33. Plaintiffs re-allege and incorporate herein, as if set forth herein, each and every allegation contained in the preceding paragraphs and further allege:

34. ConAgra is engaged in the business of manufacturing, packaging, distributing and selling products to consumers, including Peter Pan brand peanut butter and Great Value brand peanut butter.

35. ConAgra manufactured and placed in the stream of commerce the jars of Peter Pan brand peanut butter and the jars of Great Value brand peanut butter carrying a product code beginning with "2111" on the jar lid.

36. The peanut butter manufactured, packaged, distributed and sold by ConAgra is a "ready-to-eat" product that is intended and expected to be eaten without being first

cooked or heated.

37. At the time they left ConAgra's control and were placed in interstate commerce, jars of Peter Pan brand and jars of Great Value brand peanut butter bearing the product code "2111" on the jar lid were defective and unreasonably dangerous because they were contaminated with Salmonella and therefore were not safe for handling and consumption, the intended and expected use for which they were sold.

38. The jars of Peter Pan brand and the jars Great Value brand peanut butter bearing the product code "2111" on the jar lid were expected to and did reach the Plaintiffs without a substantial change in the condition in which they were sold.

39. Plaintiffs could not by the exercise of reasonable care have discovered that the peanut butter Maria consumed was contaminated with Salmonella and hence it was unreasonably dangerous.

40. The defective and unreasonably dangerous condition (Salmonella contamination) of the jars of Peter Pan brand and the jars of Great Value brand peanut butter bearing the product code "2111" on the jar lid was the direct and proximate cause of the damages and injuries suffered by Plaintiffs described herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, Maria Coton-Stephens, pray for judgment in excess of the jurisdictional minimums against the Defendant, ConAgra Foods, Inc., in an amount to be determined herein, for costs and for all further just and proper relief in the premises, including, according to proof, such exemplary or punitive damages as may be necessary

and appropriate to punish and deter any reprehensible or intentional misconduct.

COUNT III - Loss of Consortium

41. Plaintiffs re-allege and incorporate herein, as if set forth herein, each and every allegation contained in the preceding paragraphs and further allege

42. As a direct and proximate result of ConAgra's acts and omissions, Maria became severely ill after suffering from Salmonella poisoning.

43. As a direct and proximate result of the acts and omissions of ConAgra, Maria have suffered severe injuries and damages of a personal and pecuniary nature as a result of Maria's Salmonella poisoning after consuming Peter Pan peanut butter carrying a product code beginning with "2111" on the jar lid, having to undergo extensive treatment and was diagnosis with renal failure, among other illnesses, and sustained other injuries and damages of a personal and pecuniary nature.

44. As a direct and proximate result of ConAgra's acts and omissions and Maria's proximately resulting injuries, Tyrone has been deprived of a portion of Maria's love, companionship, society, consortium, and/or services which she had ably provided prior thereto.

PRAYER FOR RELIEF

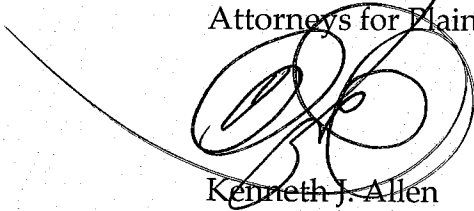
WHEREFORE, Plaintiff, Tyrone Stephens, prays for judgment against the Defendant, ConAgra Foods, Inc. in an amount to be determined herein, for costs and for any and all other relief that the Court may deem proper under the circumstances.

JURY DEMAND

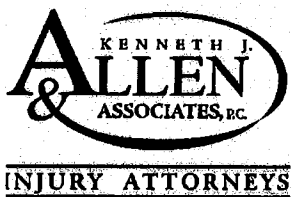
Plaintiffs MARIA COTON-STEPHENS and TYRONE STEPHENS demand trial by jury on all counts of their Complaint at Law.

Respectfully submitted,

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